

HOUSE BILL 663

By Hill M

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 34 and Title 39, Chapter 15, Part 2, relative to a civil cause of action for emotional distress resulting from an abortion.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following as a new section:

(a) A woman upon whom an abortion has been performed may maintain a cause of action against the physician who performed the abortion to recover damages for any emotional distress, whether or not independent of a physical injury, proximately caused as the result of the physician's negligence or failure to obtain informed consent prior to performance of the abortion.

(b) Notwithstanding the limitations of actions under title 28, an action under this section may be brought at any time during the lifetime of the woman.

(c) The signing of the consent form pursuant to § 39-15-202 shall not negate the cause of action, but may reduce the recovery of damages to the extent that the content of the consent form informed the woman of the risk of the type of injuries for which the woman is seeking damages.

(d) This section does not render any other statutory or common law cause of action for healthcare liability otherwise available inapplicable to abortion procedures or diminish the nature or the extent of those causes of action. The cause of action specified in this section is in addition to any other statutory or common law cause of action.

(e) A cause of action shall not be brought under this section if the abortion was performed due to a medical emergency.

(f) As used in this section:

(1) "Abortion" has the same meaning as the term is defined in § 39-15-201;

(2) "Damages" means all special and general damages which are recoverable in tort for injuries incurred by the woman including but not limited to actual and punitive damages;

(3) "Emotional distress" means a severe, debilitating, and persistent negative emotional or mental reaction including but not limited to mental anguish, fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, and indignity, as well as physical pain;

(4) "Informed consent" means the duty of a physician to disclose all facts about the nature of the procedure, the risks of the procedure, and the alternatives to the procedure that a reasonable patient would consider significant to the patient's decision to undergo an abortion; and

(5) "Medical emergency" means any condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.